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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,516	01/15/2004	William Orman Wollgast	03006	5804

39047 7590 09/21/2005

MACHETTA LAW FIRM, P.C  
 14614 FALLING CREEK DRIVE  
 HOUSTON, TX 77068

EXAMINER
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NEWVILLE, TONI E

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*me*

**Office Action Summary**

Application No.

10/758,516

Applicant(s)

WOLLGAST ET AL.

Examiner

Toni Newville

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Navarro, US 6038795.

Regarding claim 1, Navarro discloses a digging attachment (10) for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, comprising:

A connecting frame (17) with extensions (top and bottom arms of 17 in Fig. 2) near the bottom of said connecting frame (17) allowing for the connection to a vehicle latching mechanism;

A base (12), shaped like a box, with five sides and an open end, including: a top side, a bottom side, a left side, a right side (column 2 lines 30-33) and a back side (14) as well as two open cutouts (13);

The said open side has edges (60) that are shaped to cut through the surface;

The back side of said base (12) connected perpendicular to said connecting frame (17) and near the bottom so that the base is directed just above the latching

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mechanism and along the opposite side of the extensions providing support when the vehicle is attached (Fig. 1).

Regarding claim 4, Navarro discloses an attachment (10) as described above, the inherent method of use comprising the steps of:

- a. Connecting a skidsteer loader (using 21 and 17) to an attachment (10) having a connecting frame (17), a base (12) shaped like a box and an open side,
- b. Moving the attachment (10) to the swimming pool wall and
- c. Raising the attachment (10) to near the top of the wall surface where the skimmer box is to be located;
- d. Inserting the open end of the base (12) of the attachment (10) with a cutting edge (60) into the wall and
- e. Raising the attachment (10) to remove the dirt and other items from the wall and thus forming the shape for the skimmer box (column 4 line 66 – column 5 line 3).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795.

5. Regarding claim 2, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions approximately 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep. It would have been obvious matter of design choice to modify Navarro by having the base (12) be in dimensions approximately 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep since applicant has not disclosed that having the base (12) be certain dimensions solves any stated problem or is for any particular purpose and it appears that the base would perform equally well being of any dimensions.

Furthermore, it would have been obvious to one of ordinary skill in the art to design the base (12) to be any suitable dimensions based on obvious use of the device.

Regarding claim 3, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions approximately 24 inches wide by 28 inches high by 28 inches deep. It would have been obvious matter of design choice to modify Navarro by having the base (12) be in dimensions approximately 24 inches wide by 28 inches high by 28 inches deep since applicant has not disclosed that having the base (12) be certain dimensions solves any stated problem or is for any

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particular purpose and it appears that the base would perform equally well being of any dimensions.

Furthermore, it would have been obvious to one of ordinary skill in the art to design the base (12) to be any suitable dimensions based on obvious use of the device.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Toni Newville

September 13, 2005



**THOMAS B. WILL**  
Supervisory Patent Examiner  
Group 3600